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13 10-52084

14 **IN THE UNITED STATES BANKRUPTCY COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 **IN RE:**

17 No. 2:10-bk-10865-GBN

18 Pablo R. Gomez and Cynthia M. Gomez
19 Debtors.

20 Chapter 13

21 Corporate America Family Credit Union

22 **MOVANT'S MOTION TO LIFT**
23 **THE AUTOMATIC BANKRUPTCY STAY**

24 Movant,
25 vs.
26 Pablo R. Gomez and Cynthia M. Gomez, Debtors;
Edward J. Maney, Trustee.

27 RE: Real Property Located at
28 8535 North 10th Avenue
29 Phoenix, AZ 85021

30 Respondents.

31 Movant hereby requests an order granting relief from the automatic stay of 11 U.S.C.
32 362(a), and to permit Movant to foreclose the lien of its Deed of Trust on real property owned by
33 Debtors, by trustee's sale, judicial foreclosure proceedings or the exercise of the power of sale, and
34 to obtain possession and control of the real property.

35 This motion is supported by the attached Memorandum of Points and Authorities, which is

36 ...

1 incorporated herein by this reference.

2 DATED this 17th day of November, 2010.

3 Respectfully submitted,

4 TIFFANY & BOSCO, P.A.

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6 BY /s/ LJM # 014228

7 Mark S. Bosco
8 Leonard J. McDonald
Attorney for Movant

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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 1. Pablo R. Gomez and Cynthia M. Gomez filed a voluntary petition for protection
12 under Chapter 13 of the Bankruptcy Code. Edward J. Maney was appointed Trustee of the
13 bankruptcy estate.

14 2. Debtor Debtors have certain real property located in Maricopa County, Arizona,
15 more particularly described as:

16 LOT TWENTY-NINE (29), ORCHID PARK, ACCORDING TO THE PLAT OF
17 RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY,
18 ARIZONA, RECORDED IN BOOK 67 OF MAPS, PAGE 13.

19 3. Debtors executed a Note secured by a Deed of Trust, dated January 2, 2003, recorded
20 in the office of the Maricopa County Recorder's Office. True copies of the Note and Deed of Trust
21 are annexed as Exhibits "A" and "B", respectively, and made a part hereof by this reference.

22 4. By virtue of the Note and Deed of Trust, Movant has a secured interest in the
23 property described herein and a secured claim against Debtors. Movant may seek leave of Court to
24 specify any further encumbrances against the Property at the time of the Preliminary and/ or Final
25 Hearing hereon.

26 5. Movant is informed and believes and therefore alleges that the Debtors and the bankruptcy
estate have no equity in the property. Pursuant to Debtors' Chapter 13 Plan the debtors intend on

1 surrendering the title and possession interest in the subject property. A true and correct copy of the
2 Debtors' Chapter 13 Plan is attached hereto as Exhibit "C".

3 6. Debtor s are indebted to Corporate America Family Credit Union for the principal
4 balance in the amount of \$.00, plus accruing interest, costs, and attorneys fees.

5 7. Further, Movant seeks relief for the purpose of foreclosing its Deed of Trust against
6 the Debtor's interest in the real property located at 8535 North 10th Avenue , Phoenix, AZ. The
7 Movant further seeks relief in order to contact the Debtor by telephone or written correspondence
8 regarding a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other
9 Loan Workout/Loss Mitigation Agreement, and may enter into such agreement with Debtors.
10 However, Movant may not enforce, or threaten to enforce, any personal liability against Debtors if
11 Debtors' personal liability is discharged in this bankruptcy case.
12

13 8. Pursuant to the Note and Deed of Trust Movant is allowed to request this court to
14 grant reasonable attorney's fees and costs and allowing payment of Movant's attorney's fees and
15 costs pursuant to 11 U.S.C. Section 506(b) which state as follows:

16 To the extent that an allowed secured claim is secured by property value of which, after any
17 recovery under subsection (c) of this section, is greater than the amount of such claim, there
18 shall be allowed to the holder of such claim, interest on such claim and any reasonable
19 fees/costs, or charges provided for under the agreement which such claim arose.

19 CONCLUSION

20 Movant requests that the court enter an order vacating the automatic stay of 11 U.S.C.
21 Section 362(a) and Movant may immediately enforce and implement the order for relief from the
22 automatic stay as to the debtors their bankruptcy estate, the property, and Movant; to allow Movant
23 to foreclose the lien of its Deed of Trust or Mortgage; to evict debtors and/or successors of debtors
24
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26

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2 and to obtain ownership, possession and control of the Property.
3

4 DATED this 17th day of November, 2010.
5

6 BY /s/ LJM # 014228
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